

SENATE BILL 1408

By Haynes

AN ACT to amend Tennessee Code Annotated, Title 54, Chapter 5, relative to safety in highway work zones.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 54, Chapter 5, is amended by adding the following new part:

54-5-1501. The purpose of this part is to promote greater safety in state highway work zones by requiring proper training and certification of persons who act as flaggers or otherwise control or direct traffic in such zones.

54-5-1502. As used in this part, unless the context otherwise requires:

(1) "State highway work zone" means that lane or portion of a state-maintained highway open to vehicular traffic and the affected area adjacent to a lane, berm, or shoulder of a state-maintained highway upon which construction, reconstruction, resurfacing, or other work of that nature is being conducted or is in progress, regardless whether highway workers are actually present.

(2) "Flagger" means a person who controls or directs the movement of vehicular traffic through a state highway work zone using sign, hand, flag, or any other signals, and includes direct supervisors of any such persons.

(3) "Contractor" means any person who undertakes to, or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, or repair any portion of any state highway, or who prepares, erects, alters, or removes signage relative to state highway work zones.

"Contractor" includes subcontractors.

54-5-1503. The department of commerce and insurance shall develop and implement a program for the training and certification of all flaggers in state highway work zones. Certification shall be required of any individual who is employed by the state of Tennessee, or a contractor of the state of Tennessee, who acts as a flagger, either directly or in a supervisory capacity, in a state highway work zone. This program shall be in effect not later than January 1, 2002. The department of commerce and insurance shall establish a schedule of fees to be paid by persons applying for certification sufficient to cover the costs of such program. In the case of employees of the state of Tennessee who apply for certification, the cost shall be paid by the department of transportation from the state highway fund.

54-5-1504. In developing the standards for certification, the department of commerce and insurance shall consult with the American Traffic Safety Services Association and any other interested citizens or organizations to ensure that the certification program results in greater safety in state highway work zones.

54-5-1505. No person may act as a flagger in any state highway work zone after July 1, 2002, who has not been certified as a flagger pursuant to this part.

54-5-1506. (a) Any contractor who uses any person as a flagger in a state highway work zone in violation of this part shall be subject to a fine of one thousand dollars (\$1,000) per flagger for each day of violation. This fine shall be assessed and collected by the department of commerce and insurance. Such fines shall be deposited in the general fund.

(b) Any contractor who has been assessed a fine under this part may contest such fine by filing notice with the department of commerce and insurance within thirty (30) days of the date of the assessment. The contest of such fine shall be adjudicated in accordance with the contested case provisions of the uniform administrative procedures act compiled in Tennessee Code Annotated, Title 4, Chapter 5.

(c) No contractor with any unpaid fines under this part shall be permitted to bid on any state highway construction or repair project; provided, that a contractor shall be permitted to bid on such projects while any appeal from assessment of any fine is pending.

(d) The department of commerce and insurance shall promptly notify the department of transportation of the identity of any contractor against which a fine has been assessed, and shall update such information at least monthly so that the department of transportation is provided current information as to contractors who are prohibited from bidding on state highway construction and repair projects.

(e)(1) Contractors shall certify to the department of transportation as part of their bids on state highway construction and repair projects that they have no unpaid fines under this part. Any contractor falsely submitting such certification to the department of transportation shall be barred from bidding on any such projects for a period of two (2) years from the date of such false certification.

(2) Any contractor who has been barred from bidding on state highway construction and repair projects pursuant to this section may contest such bar by filing notice with the department of transportation within thirty (30) days of the date of the notice that the contractor has been barred. The contest of such bar shall be adjudicated in accordance with the contested case provisions

of the uniform administrative procedures act compiled in Tennessee Code  
Annotated, Title 4, Chapter 5.

SECTION 2. This act shall take effect July 1, 2001, the public welfare requiring it.